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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/773,334 | 01/31/2001 | Arlene Balto | 99999-0100US01 | 4268 |
| 28863 | 7590 | 07/08/2004 | EXAMINER | |
| SHUMAKER & SIEFFERT, P. A. 8425 SEASONS PARKWAY SUITE 105 ST. PAUL, MN 55125 | | | COLLINS, TIMOTHY D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3643 | |

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,334

Applicant(s)

BALTO, ARLENE

Examiner

Timothy D Collins

Art Unit

3643

ML

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 7, 9-11 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 9-11, 14-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments of the previous action have been considered but are moot and not persuasive in view of the new ground(s) of rejection, however some have been responded to so as to make the record clear.

a. Re applicant's argument that the examiner has used the features of making the device "to allow for easier handling and transportation". The examiner maintains the previous arguments with respect to this.

b. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

c. NOTE: In this case, the reasons to combine would be reasonable to one of ordinary skill in the art and are found in knowledge generally available to one of ordinary skill in the art.

d. For further response see rejections below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,11,16,18,20 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN RE 38189 (hereinafter called 189)

e. Re claim 1, 189 discloses a housing with a front, rear, bottom, and two sides sized to receive an animal. This housing is seen inherently because the device of 189 is to be used in a hospital room and therefore the room has a top, bottom and sides. Also the 189 reference shows a drip bag support (seen inherently in that number 20 which is a drip bag is being held up) coupled to the housing at least through the pole 130 which is on the floor or bottom of the housing. Also 189 discloses a syringe cradle (at least as seen in number 222 of figure 6a, which is coupled to at least one of the housing and the drip bag support.

f. Re claim 11, see rejection for claim 1 above.

g. Re claims 16 and 18, see rejections of claims 1 and 11 above. Also as seen in the figures, the post 130 supports the apparatus that holds the syringe cradle.

h. Re claims 20 and 23, see rejections of claims 1 and 11 above. 923 shows a support apparatus stabilizing the housing because it inherently places weight on the housing and this stabilizes it much in the same way sand bags or other weights are used to hold down objects and stabilize them in high winds.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5163923 (hereinafter called 923) in view of 189.

i. Re claim 1, 923 discloses a housing with a front, rear, bottom, and two sides sized to receive an animal, as seen at least in figure 1. Also 923 discloses a drip bag support (inherently because the drip bag 21 is suspended above the rest of the apparatus and therefore supported by a support). However 923 may not specifically disclose a syringe cradle, but 189 does teach of this. Therefore it would have been obvious to one of ordinary skill in the art to have applied the teachings of the cradle and syringe of 189 into the device of 923 so as to deliver medication along with the IV so as to safely deliver and monitor the medication as seen in 189.

j. Re claim 11, see rejection of claim 1 above.

6. Claims 2, 3, 6, 7, 9, 10 and 14-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over 923 in view of 189, as applied above, and further in view of Thrun (US 6,349,675) hereinafter called 675.

k. Regarding claims 2 and 14, 923 as modified by 189 discloses an animal housing. 923 may not disclose a first and second top panel hingedly attached and coupled to the housing. However 675 discloses a first and second top panel hingedly attached to an animal housing ((fig 5), and that the panels are selectively positionable to cover at least a portion of the opening, as they can be opened independently of one another (col 6, lines 26-30). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of 675 to the invention of 923 as modified by 189, as the purpose of the doors disclosed by 675 is to allow access to the interior of the enclosure. 923 as modified by 189 discloses a housing. 923 may not disclose a first and second top panel hingedly attached and coupled to the housing, or that the panels in a closed position cover less than one hundred percent of the top opening. However 675 discloses a first and second top panel hingedly attached to the housing ((fig 5), and that the panels are selectively positionable to cover at least a portion of the opening, as they can be opened independently of one another (col 6, lines 26-30) 675 also discloses that the panels cover less than one hundred percent of the top portion in the closed position (fig 5). Therefore it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to apply the teaching of 675 to the invention of 923 as modified by 189 in order allow access to the interior of the enclosure without allowing a wide area to minimize the risk of lab equipment falling in on the animal and injuring it while the enclosure is open and to prevent the animal from escaping as is taught by column 2 at lines 30-35 of the 675 reference. This would also stop any other escaped animals from getting into the cage with the one being treated. For further proof that the doors cover less than 100 percent of the top opening when in the closed position, see figure 5 of 675 which shows the doors 302 only cover approximately 50 percent of the opening which is covered by the entire apparatus shown in figure 5. The section 304 is not a door and covers the other 50 percent of the opening. The section 304 is called a "stationary panel". Also the examiner maintains that the device of 675 is concerned with housing an animal and is analogous art. See below.

l. Regarding claim 3, 923 may not disclose a clasp, however 675 discloses a securing device as seen in figure 5 under the sections labeled 302, which can be defined as a clasp, as it is holding the unit in place by a gripping means.

m. Re claim 6, 923 as modified discloses a window as seen in that there is a frame for the cage which can be considered a window. 923 may not specifically disclose a grate covering the window. However cages (as the device of 923 is called) are known to be made of a grate material. Therefore it would have been

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obvious to one of ordinary skill in the art to use a grate cage which would not restrict airflow to the animal so as to prevent suffocation.

n. Regarding claims 7, 15 and 22, see rejection of claims 2 and 14 above.

Also it can be seen from 675 that when the first and second panels are in a closed position the top of the enclosure is still partly uncovered because of the small holes in the screen material that makes up the panels. Note that the uncovered part of the opening is inherently sized to permit a handler to touch an animal because someone's arm or hand or tool will be able to touch an animal through the top as seen in 675.

o. Re claims 9 and 10, see rejection of claims 7 and 1 above. Note the fluid container support is the drip bag support.

p. Re claims 16 and 18, see rejection of claims 1 and 11 above. Also as in claim 1 the 923 reference as modified by the 189 reference shows the post for the syringe cradle is number 200.

q. Re claims 17 and 19, see rejections of claims 1 and 11 above. Also 923 as modified by 189 may not specifically disclose that the drip bag support is "crook shaped" however it is old and well known in the art that drip bag supports may be crook shaped and therefore it would have been obvious to one of ordinary skill in the art to have applied the teachings of crook shaped drip bag supports to the device of 923 as modified so as to prevent the drip bag from sliding off the support.

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r. Re claims 20 and 23, see rejection of claim 1 above. 923 as modified shows a support apparatus stabilizing the housing because it inherently places weight on the housing and this stabilizes it much in the same way sand bags or other weights are used to hold down objects and stabilize them in high winds.

s. Re claim 21, see rejections of claims 20 and 23 above. However 923 as modified may not specifically disclose that the support apparatus includes an extendable brace, however extendable supports are old and well known and therefore it would have been obvious to one of ordinary skill in the art to have used an extendable support so as to be able to position the support in a place where it would not get in the way of people attending to the animal in the housing. Also another reason would be to extend the support out of reach of the animal so that it would not be able to chew on the drip bag.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

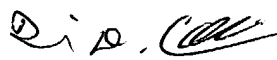
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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D Collins whose telephone number is 703-306-9160. The examiner can normally be reached on M-Th, 7:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4180.


Timothy D. Collins
Patent Examiner
Art Unit 3643


Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

6/28/04